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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,210	06/09/2005	David J. Schaffer	US020521	1819
24737 7590 07/01/2008 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER GOLDMAN, MICHAEL H				
ART UNIT 3688		PAPER NUMBER		
MAIL DATE 07/01/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/538,210

Applicant(s)

SCHAFFER ET AL.

Examiner

MICHAEL H. GOLDMAN

Art Unit

3688

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date 6-9-2005
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Inventor's Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The following non-final, first action on the merits is in response to the initial filing on June 9, 2005. Claims 1-28 are pending and have been considered below.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 1-6, 8-10, 19, 21, 22 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Wanker (7,302,429).

Claim 1, 19 and 28: Wanker discloses a method for predicting a level of interest in an available item, comprising:

-obtaining one or more recommendation scores for said available item based on a history of selecting said available item by a plurality of individuals (see abstract, lines 5-8 whereby product specific information collected by third parties, applying weighting factors (one or more recommended scores) to the information provided resulting in a ranking (scoring) of the specified products; also see column 6, lines 11-25 whereby examples of product or service information history include prior purchaser and

consumer feedback information, examiner construes prior purchaser and consumer feedback as a plurality of individuals, also see Figure 2F, item 274 et al.);

-predicting a level of interest in said available item based on said one or more recommendation scores (see column 21, lines 32-45 whereby the present invention provides a comparison system which increase the value of the returned results by giving the consumer the tools to inspect the ranking process which is relevant to the consumer's purchasing decision and interests, examiner construes comparison system which includes ranking relevant to consumers interests as predicting a level of interest based on ranking (scoring);

-apparatus comprising a memory and at least one processor coupled to the memory (see Figure 1, item 10, database (memory) and server, item 12 (processor) which via block diagram are coupled).

Claim 2, 3 and 4: Wanker discloses the invention as in claim 1 above, and further discloses the feature wherein one or more recommendation scores for said available item is a unique/aggregate/averaged recommendation score for said plurality of individuals (see abstract, line 8 'producing an aggregate value', examiner construes collecting unique scores and averaging scores as inherent to invention, also see Figure 5A, item 508, sum weighted comparison values, store aggregate scores).

Claim 5, 6, 8 and 21: Wanker discloses the invention as in claim 1 above, and further discloses the feature wherein said obtaining step further comprises the step of receiving

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one or more recommendation scores and history from at least one remote recommender, an the step of updating said history of based on item selection by at least one of said plurality of individuals (see Figure 2F, product information from Third Parties (remote recommenders), includes history information, also see column 14, lines 55-60 whereby consumer (remote recommender) could modify the weighting of items of comparison information, examiner construes consumer weighting of items as recommendation score, examiner further construes updating history as inherent to invention).

Claim 9, 10, and 22: Wanker discloses the invention as in claim 1 and 19 above, and further discloses wherein said available item is a program or content and said level of interest is a size of an audience for said program (see column 4, lines 11-16 whereby consumers could use any device capable of connecting to the server (including) a web television device, examiner construes consumers as audience for receipt of service(s), examiner further construes service(s) as including program(s) and/or content, examiner further construes the level of interest is a size of an audience as inherent to invention).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 7, 11-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wanker (7,302,429).

Claim 7 and 20: Wanker discloses the invention as in claim 1 and 19 above, however he fails to disclose the feature comprising the step of comparing said predicted level of interest to an actual level of interest and generating a correction factor to compensate for errors in said predicted level of interest.

However, it would have been obvious for a person having ordinary skill in the art at the time of the invention to modify the invention of Wanker to include the feature comprising the step of comparing said predicted level of interest to an actual level of interest and generating a correction factor to compensate for errors in said predicted level of interest. One would have been motivated to do so in order to provide improved recommendation scores, hence providing increased customer satisfaction.

Claim 11, 12, 17, and 27: Wanker discloses the invention as in claim 1 and 19 above, however he fails to disclose the features wherein said available item is a product and

said level of interest is a number of customer who will purchase said product, wherein said plurality of individuals are subscribers of a service provider in one or more geographic areas and comprising the step of adjusting content of advertising associated with said item based on demographic information of individuals who are predicted to be interested in said item.

However, it would have been obvious for a person having ordinary skill in the art at the time of the invention to modify the invention of Wanker to include the demographic features wherein said available item is a product and said level of interest is a number of customer who will purchase said product, wherein said plurality of individuals are subscribers of a service provider in one or more geographic areas and comprising the step of adjusting content of advertising associated with said item based on demographic information of individuals who are predicted to be interested in said item. One would have been motivated to do so in order to provide improved matching of items of interest with customers thereby improving the number of transactions completed.

Claim 13, 14, 15, 23, 24, and 25: Wanker discloses the invention as in claim 1 and 19 above, however he fails to disclose the features wherein said level of interest is based on a percentage of said plurality of individuals to which said item is highly recommended, wherein the item had a recommendation score exceeding a predefined threshold, wherein the item is in a top-N list.

However, it would have been obvious for a person having ordinary skill in the art at the time of the invention to modify the invention of Wanker to include the statistical features wherein said level of interest is based on a percentage of said plurality of individuals to which said item is highly recommended, wherein the item had a recommendation score exceeding a predefined threshold, wherein the item is in a top-N list. One would have been motivated to do so in order to provide improved matching of items of interest with customers thereby improving the number of transactions completed.

Claim 16, 17, 18, 26, and 27: Wanker discloses the invention as in claim 1 and 19 above, however he fails to disclose the features comprising the steps of adjusting a price of advertising associated with said item based on said predicted level of interest, adjusting a content of advertising associated with said item based on demographic information, and determining a number of said items to produce based on said predicted level of interest.

However, examiner takes Official Notice that adjusting prices, content of advertising and production decisions based upon demand are old and well known in the art (E.g. eBay and Amazon.com have been employing these old and well known features for more than ten years). Therefore, it would have been obvious to modify the invention of Wanker to use these old and well known features. One would have been motivated to do so in order to adjust supply and demand to generate maximum revenue.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Guheen et al (7,315,826). discloses comparatively analyzing of vendors of network related products and services which is accomplished with indicia coding that highlights various aspects of the vendors.

Konig et al. (6,981,040) discloses an automatic personalized online information and product services including estimating the probabilities of user interest(s).

Szabo (7,181,438) discloses a database access system wherein user characteristic(s), such as demographic profile is employed whereby subsequent scoring or ranking may be applied.

Litzow et al. (7,072,858) discloses a system and method for dynamic price setting and facilitation of commercial transactions.

Klingman (5,950,172) discloses a secured electronic rating system employing remote communication to obtain potentially desired scoring information such as an electronic evaluation form regarding a previously purchased product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL H. GOLDMAN whose telephone number is (571)270-5101. The examiner can normally be reached on Monday thru Thursday 6:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Myhre can be reached on 571-272-6722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mhg
June 25, 2008

/James W Myhre/
Supervisory Patent Examiner, Art Unit 3688